

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

Under the Administrative Procedure Act (A.R.S. § 41-1001 *et seq.*), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

Editor's Note: The Board of Respiratory Care Examiners has filed a Notice of Termination of Rulemaking on the following rules which appears on page 1350 of issue of the Register.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

PREAMBLE

1. Sections Affected:

Article 1
R4-45-101
R4-45-102
R4-45-103
Article 2
R4-45-201
R4-45-202
R4-45-203
R4-45-204
R4-45-205
R4-45-206
R4-45-207
R4-45-208
R4-45-209
R4-45-210
R4-45-211
R4-45-212
R4-45-213
Article 3
R4-45-301
R4-45-302
R4-45-303
R4-45-304

Rulemaking Action:

New Article
New Section
New Section
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2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. § 32-3504(2), "the Board shall adopt rules necessary to administer this Chapter (A.R.S. §§ 32-3501 through 32-3558).

Implementing statutes: A.R.S. § 32-3504(2), "the Board shall adopt rules necessary to administer this Chapter (A.R.S. §§ 32-3501 through 32-3558).

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mary Hauf Martin
Executive Director

Address: Board of Respiratory Care Examiners
1400 West Washington, Suite 200
Phoenix, Arizona 85007

Telephone: (602) 542-5995

Fax: (602) 542-5900

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4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
Mandated by statute.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**
The Arizona Legislature decided that regulation of this profession is in the public interest.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Mary Hauf Martin, Executive Director
Address: Board of Respiratory Care Examiners
1400 West Washington, Suite 200
Phoenix, Arizona 85007
Telephone: (602) 542-5995
Fax: (602) 542-5900
8. **The time, place, and nature of the proceeding for the adoption of the rule:**
The Board has cancelled all proceedings related to this Notice of Proposed Rulemaking. Please refer to the Notice of Termination of Rulemaking in this issue of the *Register*.
9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
10. **Incorporations by reference and their location in the rules:**
Not applicable.
11. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

- R4-45-101. Definitions
- R4-45-102. Fees
- R4-45-103. Service by the Board
- R4-45-201. Application
- R4-45-203. Examinations
- R4-45-204. Application Based on Foreign Training
- R4-45-205. Application Based on Licensure by Another State
- R4-45-206. Licensure Based on Organizational Registration or Certification
- R4-45-207. Renewal
- R4-45-208. Continuing Education Requirements
- R4-45-209. Approved Continuing Education Programs
- R4-45-210. Criteria for Acceptability of Course
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- R4-45-213. Temporary Licensure

ARTICLE 3. HEARINGS

- R4-45-301. Hearing Procedures
- R4-45-302. Rehearing or Review of Decisions
- R4-45-303. Direct Suspension
- R4-45-304. Change of Name or Address

ARTICLE 1. GENERAL PROVISIONS

R4-45-101. Definitions

The following definitions shall apply to the rules of the Board of Respiratory Care Examiners:

1. "ACLS" means Advanced Cardiac Life Support Protocols.
2. "Applicant" means a person who has applied for licensure pursuant to A.R.S. § 32-3522.
3. "Approved Continuing Education Units" or "Approved CEUs" means a planned offering that has been approved by either the Board, American Association for Respiratory Care, or the Arizona Society for Respiratory Care.
4. "BLS" means Basic Life Support Protocols.
5. "Board" means the Board of Respiratory Care Examiners.
6. "CPR" means cardiopulmonary resuscitation.
7. "Conduct or practice which is contrary to recognized standards of ethics" includes, but is not limited to, the following:
 - a. Engaging in the practice of respiratory care in a manner that harms or may harm a patient or that the Board determines falls below the community standard.
 - b. Procuring or attempting to procure a license to practice respiratory care by fraud or misrepresentation.
 - c. Violating a formal order, probation, or stipulation issued by the Board;
 - d. Obtaining a fee by fraud, deceit, or misrepresentation;
 - e. Falsely claiming attendance at continuing education programs to meet renewal requirements;
 - f. Any conduct or practice that endangers a patient's or the public's physical or emotional health and safety or may be reasonably expected to do so;
 - g. Sexual intimacies with a patient in a clinical setting;
 - h. Committing any act of sexual abuse, misconduct,

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- harassment, or exploitation;
- i. Conduct that the Board determines constitutes incompetence, gross negligence, repeated negligence, or negligence that results in harm or death of a patient;
 - j. Abandoning or neglecting a patient or leaving a respiratory therapy assignment before properly advising appropriate personnel;
 - k. Use of or being under the influence of alcoholic beverages, illegal drugs, or drugs which impair judgment while on duty in any health care work location.
 - l. Impersonating another licensed practitioner;
 - m. Employing, directing, or supervising a person who is not authorized to practice respiratory care in the performance of respiratory care;
 - n. Violating the confidentiality of information or knowledge concerning a patient;
 - o. Inaccurately recording, falsifying, or altering patient records, including, but not limited to, patient charts or medication administration records;
 - p. Falsely misrepresenting facts on an application for employment as a respiratory care practitioner;
 - q. Retaliating against any person who reported in good faith to the Board alleged incompetence, illegal, or unethical conduct of any practitioner.
8. "Continuing Education Units" or "CEUs" means any planned offerings designed to enhance learning and promote the continued development of knowledge, skills, and attitudes consistent with contemporary standards for the individual's respiratory care practice.
 9. "Direct supervision" means that the licensed respiratory care practitioner or physician is physically present at the work site readily available to provide respiratory care to a patient or observe and direct the practice by the holder of a temporary license.
 10. "Executive Director" means the executive officer employed by the Board of Respiratory Care Examiners to perform administrative and investigative functions as ordered by the Board.
 11. "License" means the actual document issued by the Board that allows a person to engage in the practice of respiratory care in the state of Arizona.
 12. "Licensee" means a person who holds a biennial license issued pursuant to A.R.S. § 32-3501 et seq.
 13. "National Board for Respiratory Care, Inc. (NBRC)" means the national credentialing board for respiratory therapy.
 14. "Other places" as defined in A.R.S. § 32-3501(5) to include but not be limited to aerosolized medication, medications given through artificial airways, and medications given through vascular access.
 15. "PALS" means Pediatric Advance Life Support Protocols.
 16. "Respiratory Care Practitioner Licensure Applicant" means a person who holds a Temporary License pursuant to A.R.S. § 32-3521(A).
 17. "State administered examination" means the examination provided to individuals who apply for a license pursuant to A.R.S. § 32-3501 and are exempted from the formal training requirements prescribed in A.R.S. § 32-3523(2). The state administered examination will be provided to the Board of Respiratory Care by contract with the NBRC.
 18. "Temporary License" means the actual document issued that allows an applicant to perform respiratory care services without a license as a Respiratory Care Practitioner

Licensure Applicant under the direct supervision of a licensed respiratory care practitioner or a physician for a period of time not to exceed 1 year pursuant to A.R.S. § 32-3521.

19. "Under the direct supervision of a licensed respiratory care practitioner or a physician" means that the holder of a temporary license may perform respiratory care services under the direct supervision of a licensed respiratory care practitioner or a physician licensed pursuant to A.R.S. Title 32, Chapter 13 or 17.
20. "Verification of License" means the form the Board provides to an applicant to submit for completion to a state or states in which the applicant previously held a license prior to Board approval for an Arizona license.

R4-45-102. Fees

A. The Board shall charge the following fees:

1. \$100 for an application for a license.
2. \$150 for an application based on a diploma from a foreign respiratory therapy school.
3. \$85 for the initial license.
4. \$85 for the biennial renewal of a license for a respiratory care practitioner.
5. \$25 for an extension to a temporary license.
6. \$10 for a duplicate license or duplicate wallet license card.
7. \$25 to purchase the Board's Respiratory Care Practitioners' List pursuant to A.R.S. § 32-3504(A)(7).
8. \$25 penalty for insufficient funds on a payment of any fee paid to the Board.

B. All fees shall be remitted to the Board by personal check, cashiers check, or money order, payable to the Board of Respiratory Care Examiners. All fees submitted to the Board will be non-refundable.

R4-45-103. Service by the Board

Service may be made by, for, or on behalf of the Board of any decision, order, subpoena, notice, or any other process by personal service or by mailing a copy by certified mail. Service by certified mail shall be made to the latest address of record on file with the Board. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party. If service is certified by mail, service is complete upon deposit in the United States Mail.

ARTICLE 2. LICENSURE

R4-45-201. Application

- A. An application for a license to practice as a respiratory care practitioner shall be submitted to the Board of Respiratory Care Examiners Office on a form prescribed by the Board.
- B. An application shall include an address of record and shall be typed or written in black ink, shall be signed by the applicant, and shall be accompanied by the following: an application fee, in the amount prescribed in R4-45-101(A)(1), all documentation needed to verify information provided on the application and a statement under oath of the facts entitling the applicant to take an examination or to receive a license without examination.
- C. The applicant shall inform the Board of any changes in the applicant's address of record within 10 days from the date of change.
- D. An applicant shall be given notice of any Board decision concerning the application.
- E. If the Board denies the application, the applicant may make a written request for a hearing to review the results of the application. Such request shall be filed with the Board within 15 days following service of notice of the denial and shall state

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specifically the reasons the Board should reconsider its decision denying the application.

- F.** An applicant for a license must be a high school graduate or have obtained a General Equivalency Diploma (G.E.D.)

R4-45-402. Minimum Standards Curriculum

The minimum standards of training programs for respiratory therapists or respiratory therapy technicians shall consist of a curriculum in accordance with the Essentials and Guidelines of an Accredited Education Program for the Respiratory Therapy Technician and Respiratory Therapist adopted in 1962 (revised in 1972, 1977, and 1986), the most recent version, by the Joint Review Committee for Respiratory Therapy Education of the Commission on Accreditation of Allied Health Education Programs (CAAHEP) which is incorporated by reference, is on file with the Office of Secretary of State, and copies are available from CAAHEP, 515 North State Street, Chicago, Illinois 60610.

R4-45-203. Examinations

- A.** An applicant for a license shall pass a written examination for Certified Therapy Technicians offered by the NBRC.
B. If the NBRC administers the examination to the applicant, the Applicant, or NBRC at the Applicant's direction, will forward a copy of either his or her tests results or certificate to the Board as soon as possible indicating he or she passed the examination.

R4-45-204. Application Based on Foreign Training

If an application for a license is based on a diploma from a foreign respiratory therapy school, the applicant shall cause the institution from which the diploma was issued to deliver to the Board certified copies of course transcripts as well as all other information concerning the applicant's course of study sufficient to enable the Board to determine whether his or her course of study is equivalent to the Board's minimum standards.

R4-45-205. Application Based on Licensure by Another State

- A.** If an application for a licensure is based on licensure by another state, the applicant shall cause the state or states which issued the license to deliver to the Board certified copies of such license as well as a Verification of License regarding the status of applicant's license in that state prior to Board approval of the applicant's license.
B. The applicant shall cause the state in which he or she is licensed to deliver to the Board a copy of either the results of the NBRC examination or a copy of any other examination administered to the applicant and any other information necessary to enable the Board to determine whether such examination is equivalent to that which the Board administers.

R4-45-206. Licensure Based on Organizational Registration or Certification

The Board may issue a licensure to an applicant without examination if the applicant files an application for licensure, satisfies all pertinent requirements prescribed in A.R.S. § 32-3523, and is registered as a respiratory therapist or certified as a respiratory therapy technician by the NBRC.

R4-45-207. Renewal

- A.** All respiratory care practitioner licenses expire biennially on the licensee's birthday. In order to renew an expired license, an individual must:
 1. Pay the renewal licensing fee, and
 2. Complete the required continuing education units for the previous licensing period, or
 - a. If the expired license is not renewed before the next succeeding license period, the individual must reapply as a new applicant;
 - b. An individual whose license has expired and who

has not actively practiced respiratory care for a period of 2 years or more, must reapply as a new applicant. Licensees whose license has expired shall be notified of such expiration by mail at the address on file.

- B.** Misrepresentation of information on the renewal application or of compliance in acquiring continuing education units shall constitute grounds for disciplinary action.

R4-45-208. Continuing Education Requirements

The legislature and the Board have determined that competency in delivery of respiratory care services is enhanced by continuous updating of knowledge and skills. To this end, continuing education is required as a condition of renewal of licensure.

1. Each respiratory care practitioner is required to complete 20 hours of approved continuing education every 2 years. To renew their license, each respiratory care practitioner shall report compliance with the continuing education requirements. Supporting documentation, showing evidence of compliance with each requirement under R4-45-210 shall be submitted only if requested by the Board.
2. During the 1st renewal period of a license, the licensee shall use the date of application for licensure as the beginning period in which they are entitled to gather continuing education credits until the renewal date of their license is specified by the Board. The continuing education period from then on shall be between the licensee's birth date every 2 years.

R4-45-209. Approved Continuing Education Programs

- A.** Any course or program meeting the criteria set forth in R4-45-210 will be accepted by the Board for continuing education credit. The Board shall have the authority to audit programs offering continuing education for compliance with the criteria set forth in R4-45-211.
B. Any course or program approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care will be accepted by the Board for continuing education credit.

R4-45-210. Criteria for Acceptability of Course

- A.** Acceptable courses and programs shall meet the following criteria: The content of the course or program shall be relevant to the scope of practice of respiratory care as defined in A.R.S. § 32-3501(5). At least 2/3 of the required continued education hours shall be related to clinical practice.
B. The remaining 1/3 non-clinical continuing education hours are defined as:
 1. Those activities relevant to specialized aspects of respiratory care, which include education, supervision, and management;
 2. Health care cost containment or cost management;
 3. Preventative health services and health promotion;
 4. Required abuse reporting;
 5. Other subject matter which is directed by legislation to be included in continuing education for licensed healing arts practitioners.**C.** The faculty shall be knowledgeable in the subject matter as evidenced by:
 1. A degree from an accredited college or university and verifiable experience in the subject matter, or
 2. Teaching and clinical experience in the same or similar subject matter.**D.** Application for approval of a continuing education program at a minimum shall include:
 1. Educational objectives shall be listed;

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2. The teaching methods shall be described, for example: lecture, seminar, audio visual, or simulation;
3. Shall reflect an interactive format;
4. Course organizers shall maintain a record of attendance of participants for 3 years;
5. All course providers shall provide documentation to each course participant that includes: participant name, respiratory care practitioner license number, course title, number of hours of continuing education, date or dates, and name and address of course provider.

R4-45-211. Audit and Sanctions for Noncompliance

- A. The Board shall audit a random sample of respiratory care practitioners for compliance with the continuing education requirements. If documentation of the continuing education requirement is incomplete, the respiratory care practitioner shall correct the deficiency. If the documentation proving the adequacy is not provided within 60 days of the expiration date, the license shall be revoked and the renewal fee forfeited. The Board may audit all late renewals for compliance with continuing education requirements.
- B. Misrepresentation of compliance shall constitute grounds for disciplinary action.
- C. Documentation supporting compliance with continuing education requirements shall be available to the Board upon request during the 2-year period following recertification.

R4-45-212. Waiver of Requirements

At the time of making application for renewal of a license, a respiratory care practitioner may request a waiver from completion of the continuing education requirements. The Board shall grant a waiver only if the respiratory care practitioner verifies in writing that, during the period immediately prior to the expiration of the license, he or she:

1. Has been residing in another country for at least 1 year, reasonably preventing completion of continuing education requirements; or
2. Has been absent from Arizona for at least 1 year because of military or missionary service reasonably preventing completion of the continuing education requirements; or
3. Has been prevented from completing the continuing education requirements for reasons of health or other good cause which includes:
 - a. Total physical and/or mental disability of the respiratory care practitioner for at least 1 year; or
 - b. Total physical and/or mental disability of an immediate family member for at least 1 year where the respiratory care practitioner has total responsibility for the family member. Verification of the disability under this Section shall be made by a licensed physician and/or surgeon.

R4-45-123. Temporary Licensure

- A. The Board through their Executive Director shall issue a temporary license to all individual once the information on the application has been verified for excepted status by Board staff for any who apply for licensure and perform respiratory care services under direct supervision, as described in R4-45-303, of a licensed respiratory care practitioner or a physician pursuant to A.R.S. Title 32, Chapter 13 or 17. The temporary license may be renewed for an additional 120 days after the initial 8-month period upon review of the applicant's request. An individual may receive only 1 8-month temporary license and 1 120-day temporary license renewal.
- B. A request for a renewed temporary license shall be submitted to the Board of Respiratory Care Examiners office on a form prescribed by the Board.

- C. The request for a renewed temporary license shall include an address of record and shall be typed or written in black ink, shall be signed by the applicant, and shall be accompanied by the following: a temporary license renewal fee in the amount prescribed in R4-45-102(A)(5), and a statement under oath of the facts entitling the applicant to receive a renewed temporary license.
- D. If an applicant does not meet the requirements for licensure or apply for an extension to a temporary license within 60 days of the expiration date of the temporary license or temporary license extension, the application for licensure shall be administratively closed and they will have to reapply for licensure.
- E. A temporary license is subject to A.R.S. § 32-3553.

ARTICLE 3. HEARINGS

R4-45-301. Hearing Procedures

The following procedures are applicable to all hearings conducted in accordance with A.R.S. § 32-3553(I):

1. A notice of hearing shall be served upon all parties.
2. A licensee served with a Complaint and Notice of Hearing shall file an answer within 10 days of service of the complaint, admitting or denying the allegations of the complaint.
3. A Complaint and Notice of Hearing may be amended to add new or additional grounds prior to hearing. The licensee is entitled to 20 days notice prior to the hearing on the amended complaint. The licensee shall file an amended answer to the amended complaint within 10 days of being served.
4. If a party fails to appear, the hearing may be held in the party's absence.
5. The chairperson of the Board or the designated presiding officer may continue, reschedule, or extend the hearing for good cause or for the performance of acts as required by law or the Board.
6. Hearings conducted by the Board are open to the public.
7. The designated presiding officer shall conduct the proceedings and rule on the admissibility of evidence.
8. All hearings shall be mechanically or stenographically recorded. The Board is not required to transcribe such records unless there is an appeal to the superior court. However, upon written request and receipt of a reasonable fee for transcribing such record, the Board may transcribe the record or allow for its transcription by the person requesting the record.
9. In all cases determined by the hearing, the Board shall issue a decision and order in accordance with A.R.S. Title 41, Chapter 6. The Board shall serve upon all parties this decision and order. Any party may seek rehearing of this order pursuant to R4-45-302.

R4-45-302. Rehearing or Review of Decisions

- A. Except as provided in subsection (G), any party appearing before the Board who is aggrieved by a decision rendered, may file with the Board, not later than 10 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds thereof.
- B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 days after service of such motion or amended motion by any other party. The Board may require the filing of written briefs addressing the issues raised in the motion and may provide any oral argument.
- C. A rehearing or review of the decision may be granted based on a contention that the decision was either:

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1. Founded on or contained errors of law which shall specifically include errors of construction or application of any relevant rules.
 2. Unsupported by any competent evidence as disclosed by the entire record.
 3. Materially affected by unlawful procedures;
 4. Based on a violation of any constitutional provision, or
 5. Arbitrary or capricious
- D.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover those matters so specified.
- E.** Not later than 10 days after a decision is rendered, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on a motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing must specify the grounds thereof.
- F.** When a motion for rehearing is based upon affidavits, they must be served with the motion. An opposing party may serve opposing affidavits within 10 days after such service. This period may be extended by the Board for an additional period

not exceeding 20 days by written stipulation of the parties. Reply affidavits may be permitted.

- G.** If, in a particular decision, the Board makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public health, safety, and welfare, the decision may be issued as a final decision without an opportunity for rehearing, an application may be filed for judicial review of the Board's final decision.
- H.** For purposes of this Section, the term "party" shall be defined as provided in A.R.S. § 41-1001(8).

R4-45-303. Direct Supervision

The holder of a temporary license may perform respiratory care services under the direct supervision of a licensed care practitioner or a physician licensed pursuant to A.R.S. Title 32, Chapter 13 or 17. For purposes of this rule, the term "Direct Supervision" means that the licensed respiratory care practitioner or physician is physically present at the work site readily available to provide respiratory care to a patient or observe and direct the practice by the holder of a temporary license.

R4-45-304. Change of Name or Address

- A.** A licensee shall notify the Board in writing within 30 days when his or her name has been legally changed. A copy of the official document evidencing the name change shall be included. A duplicate license fee shall be paid by the licensee.
- B.** A licensee shall notify the Board office within 10 days of a change in his or her address of record.